Supreme Court, U.S.
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DOCKET NUMBER 01-1619

In The

SUPREME COURT OF THE UNITED STATES

JAMES AKERS,

Petitioner,

v.

CAROLYN P. BISHOP, et al.

On Petition for Writ of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

BRIEF FOR RESPONDENTS, TODD M. LAYNE and DONALD SHANNON

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Lemon v. Druffel, 253 F.2d. 680, 683 (6th Cir. 1958)

F.D.I.C. v. McGlamery, 74 F.3d. 218, 222 (10th Cir. 1996)

Middlebrooks v. Smith, 735 F.2d. 431, 432 (11th Cir. 1984)

STATEMENT OF JURISDICTION

This appeal to this Honorable Court is pursuant to Rule 10 of the Rules of the Supreme Court of the United States. Pursuant to Rule 13 of the Rules of the Supreme Court of the United States, the Petitioner is to file his Writ for Certiorari within ninety (90) days after entry of the judgment from the United States Court of Appeals. The U.S. Court of Appeals, Sixth Circuit, under Docket Number 01-6243, filed on or about January 24, 2002, an Order dismissing the appeal of the Petitioner (App. 1). The Petition for Writ of Certiorari was filed with this Court on April 24, 2002.

CONCISE STATEMENT OF CASE

The Petitioner, James Akers, filed a lawsuit in the United States District Court, Middle District of Tennessee, Nashville Division, bearing Docket Number 3:00-1142, which was assigned to U.S. District Judge Robert L. Echols. Judge Echols adequately summarized the facts of the case in his Memorandum opinion, entered on September 8, 2001 (App. 3). To summarize from that Memorandum, the pro se plaintiff filed a 134-page Complaint against sixteen individuals, and numerous unnamed defendants, wherein he alleged violations of his constitutional rights under 42 U.S.C. § 1983, conspiracy to violate his constitutional rights under 42 U.S.C. § 1985, and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68. The Court accepted subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

The lawsuit pertains to the plaintiff's criminal convictions for stalking and assaulting the defendant, Carolyn Bishop, the plaintiff's former wife. The defendants in this case include judges, prosecutors and witnesses involved in the criminal proceedings which took place in state courts in Kentucky. The plaintiff alleges in this lawsuit that his Kentucky state court convictions resulted from an unlawful conspiracy between the defendants.

In the trial court, these Respondentss, Todd Layne and Donald Shannon, moved to dismiss the case for lack of personal jurisdiction

pursuant to F.R.C.P. 12(b)(2), for lack of venue pursuant to F.R.C.P. 12(b)(3) and for failure to state a claim upon which relief can be granted pursuant to F.R.C.P. 12(b)(6). In the alternative, these Respondentss requested that Judge Echols transfer the case pursuant to either 28 U.S.C. § 1404(a)(1994) or 28 U.S.C. § 1406(a)(1994) to the United States District Court for the Eastern District of Kentucky.

The District Court granted the defendants' Motion to Transfer this matter to the U.S. District Court for the Eastern District of Kentucky. The Court "denied as moot" the defendants' Motions to Dismiss (App. 2).

The Petitioner then appealed to the U.S. Court of Appeals, Sixth Circuit, under docket number 01-6243, the order to transfer this lawsuit from the U.S. District Court for the Middle District of Tennessee, Nashville Division, to the U.S. District Court for the Eastern District of Kentucky, Lexington Division. On January 24, 2002, an Order was entered by the U.S. Court of Appeals, Sixth Circuit, setting forth that the appellate court lacked jurisdiction over this appeal, since the order transferring the case was not appealable and that, specifically, the ruling on a Motion to Transfer was not appealable under the collateral order exception. The Court of Appeals dismissed the appeal of the Petitioner (App. 1).

ARGUMENT

The Petitioner has presented for review five separate questions. Specifically, those questions presented by the Petitioner for review are as follows:

(I) Whether venue properly lies with the United States District Court for Middle Tennessee District – Nashville Division;

(II) Whether the "ORDER" transferring venue to Eastern District of Kentucky, at Lexington, is "collateral to the merits" of the case;

(III) Whether transfer of the case to the United States District Court of Kentucky, at Lexington, will result in irreparable damage to Akers;

(IV) Whether the issues respecting transfer of case to the Eastern District of Kentucky, at Lexington, are "too important to be deferred until the whole case is adjudicated"; and

(V) Whether "ends of justice" require venue to remain in United States District Court for the Middle Tennessee District – Nashville Division.

It should be noted that these Respondents do not agree with the statements of fact or law that are included in the Petition. Instead, these Respondents rely upon the summary of facts and applicable law, as set forth further

herein. The Petitioner has mistakenly set forth his "theories of conspiracy", which he has yet to have litigated, which bear no relevancy to the sole issue before this Court, as to whether or not a writ of certiorari should be granted and, in particular, whether or not there are compelling reasons proven by the Petitioner to allow a writ to be granted. These Respondents deny that they bear any responsibility or fault with regard to the basic allegations, accusations and claims set forth, both in the Petitioner's original Complaint filed in the U.S. District Court for the Middle District of Tennessee, or that are included in the Petition for a Writ of Certiorari. Also, these Respondents specifically deny and do not agree that the transfer of this case to the U.S. District Court in Kentucky will result in irreparable damage to the Petitioner; that the issues respecting transfer are too important to be deferred until the whole case is adjudicated; or that the "ends of justice" require venue to remain in the United State District Court for the Middle District of Tennessee.

It is the position of these Respondents that the real question for review from this Court is: (1) Whether the Petitioner has compelling reasons to require this Court to exercise its judicial discretion and grant a writ of certiorari, pursuant to Rule 10 of the Rules of the Supreme Court of the United States; and (2) whether the Order entered by the District Court transferring this lawsuit from one court to another is even an appealable order subject to review by this Honorable Court.

1. Whether the Petitioner has compelling reasons to require this Court to exercise its judicial discretion and grant a writ of certiorari pursuant to Rule 10 of the Rules of the Supreme Court of the United States.

As set forth in Rule 10 of the Rules of the Supreme Court of the United States, a "review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling or fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals;

(c) a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

In the instant case, and the issues presented in this appeal, do not address any of the criteria set forth in Rule 10. There is no compelling reason set forth by the Petitioner in his Petition to display or describe a compelling reason for this Court to grant his request. There is no appellate

decision in conflict with the decision of another court on an important matter, nor has there been any departure by the U.S. Court of Appeals to create any kind of conflict on a federal law or question which would indicate a compelling reason for this Court to address this issue. In short, the appeal pertains solely to an Order transferring all of the claims set forth by the plaintiff in this lawsuit from the U.S. District Court in Tennessee to the U.S. District Court in Kentucky. The Petitioner has set forth no compelling reason as to show why the earlier orders should be reversed and why he should not be required to pursue his claims in the State of Kentucky, as opposed to the State of Tennessee. Clearly, this is not an issue that this Honorable Court should have to address.

2. Whether the Order entered by the District Court transferring this lawsuit from one court to another is even an appealable order subject to review by this Honorable Court.

In his Memorandum opinion (App. 3) supporting the Order that was entered transferring this lawsuit to the U.S. District Court for the Eastern District of Kentucky, Judge Echols set forth that 28 U.S.C. § 1391(b)(2)(1994) was the applicable venue statute which applied to this case which states,

> A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in...a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred...(App 2,3)

The Trial Court was well within its right to transfer this case to the U.S. District Court for the Eastern District of Kentucky, since the Court found that most, if not all, of the events alleged to have occurred, as set forth in the Complaint, were in the Eastern District of Kentucky, including the plaintiff's arrest, a state court trial, sentencing, and the location of his incarceration. The Court concluded correctly that "a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of Kentucky" (App. 3).

The U.S. Court of Appeals, Sixth Circuit, correctly set forth in its Order that the Order to Transfer was not an appealable order and that the Court of Appeals lacked jurisdiction to reverse the Trial Court's Order (App. 1). Such an order is not a final and appealable order, nor was jurisdiction present in the U.S. Court of Appeals to support such an appeal. 28 U.S.C. § 1291. It has been held that such orders are interlocutory and are not immediately reviewable by appeal. See SongByrd, Inc. v. Estate of Grossman, 206 F.3d. 172, 176 (2d Cir.) cert. denied, 531 U.S. 824 (2000); Lemon v. Druffel, 253 F.2d. 680, 683 (6th Cir. 1958) As set forth by the Court of Appeals in the instant case, a ruling on a Motion to Transfer is not appealable under the collateral order exception. F.D.I.C. v. McGlamery, 74 F.3d 218, 222 (10th Cir. 1996); Middlebrooks v. Smith, 735 F.2d. 431, 432 (11th Cir. 1984).

Based upon the foregoing, it is clear that the Trial Court's Order was not a final order, which would allow it to be reviewable or appealable to the appellate level. The Court of Appeals did not even have jurisdiction in which to entertain the question on the Order to Transfer.

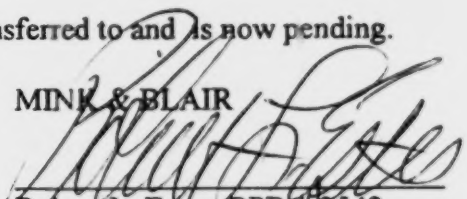
CONCLUSION

The Petitioner has presented certain issues to the Court for its review, but has not set forth or adequately evidenced any compelling reason which will allow this Court to use its judicial discretion to grant the Petition for Writ of Certiorari. The Petitioner still has this lawsuit pending, and, indeed, all of the claims asserted by the Petitioner in his original Complaint, as well as all allegations that he has set forth in his Petition for Writ of Certiorari, have yet to be litigated or adjudicated. The only thing that has transpired is that the Trial Court ordered the transfer of this case to the appropriate venue; thus, none of the substantive claims of the Plaintiff were adjudicated by the Order of the U.S. District Court for the Middle District of Tennessee from which Plaintiff appealed nor by the U.S. Court of Appeals for the Sixth Circuit which he seeks a Petition for Certiorari.

The Petitioner pursued an appeal to the U.S. Court of Appeals that was not appropriate, and was summarily dismissed. The Petitioner bothers this Honorable Court with a request to set aside an Order of Transfer from one Trial Court to another Trial Court, which was not even appealable to the appellate level. The Petitioner has shown no harm, nor proven any theory resulting in harm to him, which would present a compelling reason for the Court to grant his Petition for Writ of Certiorari and consider this matter any further. The issues in this lawsuit should be appropriately

litigated in the United States District Court for the Eastern District of Kentucky, where this case has been transferred to and is now pending.

MINK & BLAIR



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Todd M. Layne and
Donald Shannon.

APPENDIX

Exhibit 1 - Order from United States Court of Appeals, Sixth Circuit, Docket No. 01-6243, filed January 24, 2002, dismissing the Petitioner's appeal

Exhibit 2 - Order from United States District Court, Middle District of Tennessee, Nashville Division, bearing Docket No. 3:00-1142, entered September 18, 2001, granting a Motion to Transfer and denying, as moot, the defendant's Motions to Dismiss

Exhibit 3 - Memorandum from U.S. District Court, Middle District of Tennessee, Nashville Division, bearing Docket No. 3:00-1142, explaining the basis for the granting of the Motion to Transfer this matter to the United States District Court for the Eastern District of Kentucky.

FILED
JAN 24 2002
Leonard Green, Clerk

No. 01-6243

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES G. AKERS,	)	
	)	
Plaintiff-Appellant,	)	ORDER
	)	
v.	)	NOT RECOMMENDED FOR
CAROLYN P. BISHOP, et al.,	)	FULL-TEXT PUBLICATION
	)	Sixth Circuit Rule 28(g) limits
Defendants-Appellees.	)	citation to specific situations. Please See Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit limited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

Before: KENNEDY and DAUGHTREY, Circuit Judges; BELL,* Chief District Judge.

This matter is before the court upon consideration of motions of the appellees to dismiss the appeal on the basis that the order transferring the case to a different district court is not a final or appealable order. The appellant responded arguing that the order is appealable under the collateral-order doctrine. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-47 (1949). The appellant also filed a motion seeking

* The Honorable Robert Holmes Bell, Chief United States District Judge for the Western District of Michigan, sitting by designation.

reconsideration of the clerk's letter holding the briefing schedule in abeyance pending a ruling on the motions to dismiss.

A review of the documents before the court indicates that the appellant filed a civil complaint in the United States District Court for the Middle District of Tennessee. The court transferred the case to the United States District Court for the Eastern District of Kentucky. Appellant appealed the order transferring the case.

This court lacks jurisdiction over this appeal. The order transferring the case is not appealable. *See SongByrd, Inc. v. Estate of Grossman* , 206 F.3d 172, 176 (2d Cir .), *cert. denied* 531 U.S. 824 (2000); *Lemon* v. *Druffel,* 253 F.2d 680, 683 (6th Cir. 1958). A ruling on a motion to transfer is not appealable under the collateral order exception. *FDIC v. McGlamery,* 74 F.3d 218, 222 (lOth Cir. 1996); *Middlebrooks v. Smith,* 735 F.2d 431, 432 (11th Cir. 1984).

It is ordered that the appeal is dismissed. The motion for reconsideration is denied as moot.

ENTERED BY ORDER OF THE COURT

Clerk

This document was entered on the docket in compliance with Rule 56 and/or Rule 79(a).
FRCP on 9/18/01 By JR

FILED
JAN 24 2002
Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAME S G. AKERS ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS TODD M. LAYNE, DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT. PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,	)	
	)	
Defendants.	)	

ORDER

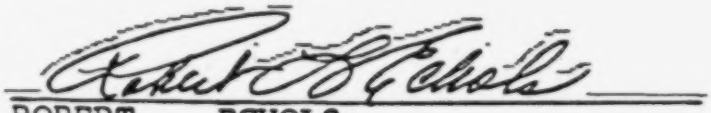
Presently pending before the Court are Motions to Dismiss by defendants Bishop, Williams, and Rushing (Docket Entry Nos 55,71, & 73 and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51, & 76). Plaintiff has filed several documents in opposition.

For the reasons explained in the Memorandum entered contemporaneously herewith, Defendants' Motions to Transfer are hereby

GRANTED, and this case is hereby TRANSFERRED to the United States District Court for the Eastern District of Kentucky.

Defendants' Motions to Dismiss are hereby DENIED AS MOOT.

It is so ORDERED.



ROBERT ECHOLS
UNITED STATES DISTRICT JUDGE

This document was entered on the docket in compliance with Rule 56 and/or Rule 79(a). FRCP on 9/18/01 By JR

FILED
JAN 24 2002
Leonard Green, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES G. AKERS ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:00-1142
	)	JUDGE ECHOLS
CAROLYN P. BISHOP, DORIS FLEMING, ALLEN I. RUSHING, TODD M. LAYNE , DONALD SHANNON, JERRY L. KELLY, JOHN J. VAUGHN, THOMAS D. CLARK, KATHERINE WITT, PAMELA MILLER, LOU A. RED CORN, REBECCA M. OVERSTREET, CINDY G. SWARTZ, ERNEST W. WILLIAMS, TODD D. FERGUSON, PAMELA D. GOODWINE, and various JOHN and JANE DOES,	)	
	)	
Defendants.		

MEMORANDUM

Presently pending before the Court are Motions to Dismiss by Defendants Bishop, Williams, and Rushing (Docket Entry Nos. 55,71, & 73) and Motions to Dismiss or Transfer by all other Defendants (Docket Entry Nos. 31, 34, 37, 38, 42, 51 & 76). Plaintiff has filed several documents in opposition.

For the reasons explained herein, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United States District Court for the Eastern District of Kentucky. Defendants' Motions to Dismiss will be DENIED AS MOOT.

Plaintiff, who proceeds pro se, has filed a 134-page Complaint (Docket Entry No. 1) against sixteen individuals and numerous unnamed defendants. He alleges claims for violations of his constitutional rights under 42 U.S.C. § 1983 (1994 & Supp. IV), conspiracy to violate his constitutional rights under 42 U.S.C. § 1985 (1994), and violations of the Racketeer and Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68 (1994 & Supp. IV). Because the claims are based on federal law, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (1994).

This lawsuit arises from Plaintiff's criminal convictions for stalking and assaulting Defendant Carolyn Bishop, his former wife. The defendants include judges, prosecutors, and witnesses involved in the criminal proceedings which took place in state courts in Kentucky. Plaintiff alleges in the instant suit that his Kentucky state court convictions resulted from an unlawful conspiracy between the Defendants.

Defendants now move to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2), for lack of venue pursuant to Rule 12(b)(3), and for failure to state a claim upon which relief can be granted pursuant to

Rule 12(b)(6) of the Federal Rules of Civil Procedure. All Defendants except Bishop, Williams, and Rushing seek, in the alternative, to have the case transferred pursuant to either 28 U.S.C. § 1404(a) (1994) or 28 U.S.C. § 1406(a) (1994) to the United States District Court for the Eastern District of Kentucky.

The applicable venue statute states,

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in ...a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. ... 28 U.S.C. § 1391(b)(2) (1994).

The Court has reviewed Plaintiff's lengthy Complaint, and the only events alleged to have occurred in this District are some telephone calls to and from his former wife; Defendant Carolyn Bishop, in Lexington, Kentucky, which may have violated a protective order and formed the basis for contempt charges, and his extradition in October 1995 from Tennessee to Kentucky after his arrest. All other events alleged in the Complaint occurred *in* the Eastern District .of Kentucky, including his divorce, the events that led to his arrests, his trial in state court, sentence, and the location of his incarceration. Therefore, based upon the record before the Court, the Court concludes that "a substantial omission part of the events or omissions giving rise to the claim [s] occurred" in the Eastern

District of Kentucky. Only a few tangential acts/events are alleged to have occurred in the Middle District of Tennessee. Consequently, the Court finds that venue does not *lie in* this District under 28 U.S.C. § 1391(b)(2).

However, RICO claims have a special venue statute, 18 U.S.C. § 1965 (1994), which states in part:

> (a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.
>
> (b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

18 U. S. C. § 1965 (a) and (b).

The only Defendant who resides, is found, has an agent or transacts his affairs *in* this District *is* Ernest Williams.[1]

Apparently, Plaintiff does not dispute that venue cannot lie in this District as to his RICO claims against the other fifteen Defendants allegations based on 18 U.S.C. § 1965 (a). Giving Plaintiff's allegations

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[1] Several Defendants contend that Plaintiff has fraudulently joined Defendant Williams in order to avail himself of the RICO venue statute. As the text of the statute indicates, a district court must have personal jurisdiction over at least one defendant pursuant to 1965(a) *in* order to bring the other members of an interstate conspiracy before the court pursuant to 1965(b). See Butcher's Union Local No. 498, United Food & Commercial Workers v. SDC Inv. Inc., 788 F.2d 535, 539 (9th Cir. 1986). Since it *is* not essential to the Court's resolution of the pending motions, the Court expresses no opinion on this issue.

the liberal construction afforded pro se litigants, however, he maintains that venue exists here as to the claims against the remaining Defendants pursuant to 18 U.S.C. § 1965(b). As expressly stated in the statute, before a district court can summons parties from other districts to answer to a RICO claim, it must find that "the ends of justice" so require.[2] What is required to meet "the ends of justice" requirement under the statute is not crystal clear, but, at a minimum, the Court must determine that there *is* no other district which has personal jurisdiction and venue over all members of the alleged RICO conspiracy. See Butcher's Union Local No. 498, United Food & Commercial Workers v. SDC Inv., Inc., 788 F.2d 535, 538-39 (9th Cir. 1986). The Second Circuit, *in* discussing an assertion of personal jurisdiction based upon 18 U.S.C. § 1965(b), stated as follows,

> This jurisdiction *is* not automatic but requires a showing that the "ends of justice" so require. This is an unsurprising limitation. There *is* no impediment to prosecution of a civil RICO action in a court foreign to some defendants if it is necessary, but the first preference, as set forth in § 1965(a), *is* to bring the action where suits are normally expected to be brought. Congress has expressed a preference in § 1965 to avoid, where possible haling defendants into far flung fora.

---

[2] Even then, a district court *is* not mandatorily required to bring the other parties before the court, since the statute provides only that the Court "may" cause such parties to be summoned and process be served *in* other districts. See 18 U.S.C. § 1965 (b).

PT United *Can Co.* Ltd. v. Crown Cork & Seal Co., Inc., 138 F.3d 65, 71-72 (2d *Cir.* 1998).

Based upon the record in this case, the Court finds that the "ends of justice" do not require that the other fifteen defendants be haled into this Court from other districts. First the entire case can be litigated in the Eastern District of Kentucky, where most of the Defendants are located and almost all the alleged illegal acts occurred. As noted previously, venue is proper in that District and said District Court has personal jurisdiction over every Defendant under Section 1965. More specifically, thirteen Defendants live there; Defendant Rushing, who now lives in Knoxville, lived there at the time of the events that led to this lawsuit; and Defendant Williams, who lives in Franklin, Tennessee, represented Plaintiff in that District during his trial there. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) personal jurisdiction requires "certain minimum contacts" with the forum state and "that the maintenance of the suit [against the non-resident defendant] does not offend traditional notions of fair play and substantial justice."). Based upon the facts and circumstances of this case, the Court finds that justice does require that this case be litigated here.

Second, even if the Court permitted Plaintiff to litigate his RICO claims here, venue would still be improper as to his Section 1983 and Section 1985 claims because a substantial part of the events giving rise to plaintiff's claims did not occur in. this District (28 U.S.C. § 1391(b)(2) and

Title 18 U.S.C. § 1965 (a) applies only to the RICO claims; not the Section 1983/Section 1985 claims. There has been no suggestion that this Court should dismiss the Section 1983/Section 1985 claims or sever and transfer them to the Eastern District of Kentucky, and proceed to trial here on the RICO claims. Such a course of action would not promote judicial economy and would delay and add additional hardships to the parties. Therefore, for the reasons stated, the Court concludes that venue does not properly lie in this District for Plaintiff's RICO claims.

Having determined that proper venue does not lie in this District, the Court next addresses the issue of dismissal or transfer. Title 28 U.S.C. § 1406(a) provides as follows:

> The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

As previously noted, this suit could have been brought in the Eastern District of Kentucky, and the venue and personal jurisdiction requirements are satisfied there as to every claim of the Plaintiff. Since an outright dismissal might subject Plaintiff's claims to legal defenses under applicable statutes of limitations, the Court finds that it is in the interests of justice to transfer the case to the Eastern District of Kentucky.[3]

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[3] Given this disposition, the Court need not address Defendants' other arguments including the contentions of the many Defendants who claim that this Court lacks personal jurisdiction over them. See Pittock v.

For the foregoing reasons, Defendants' Motions to Transfer will be GRANTED, and this case will be TRANSFERRED to the United 'States District Court for the Eastern District of Kentucky, Defendants' Motions to Dismiss will be DENIED AS MOOT.

An appropriate order will be entered.

ROBERT ECHOLS
UNITED STATES DISTRICT JUDGE

This document was entered on the
docket in compliance with Rule 56
and/or Rule 79(a).
FRCP on 9/18/01 By JR

Otis Elevator Co., 8 F.3d 325, 329 (6th Cir. 1993) (citing Goldlawr, Inc. v. Heiman, 369 U.S. 463 (1962)) (transfer under 1406(a) is permissible even where there is both improper venue and lack of personal jurisdiction in the transferor forum) .

CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of the foregoing document has been forwarded to the parties listed below via First Class U.S. Mail:

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On this the 20th day of May, 2002.

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